DEFENDER ASSOCIATION OF PHILADELPHIA

1441 Sansom Street
Philadelphia, PA 19102-3004
(215) 568-3190 (215) 988-0208 fax

DISTRICT ATTORNEY'S OFFICE
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

LAWRENCE S. KRASNER
DISTRICT ATTORNEY

May 3, 2019

Dear Judge Dugan and Judge Fox,

We write together to regretfully inform you that the Defender Association and the District Attorney's Office are withdrawing our support for the Risk Assessment Tool (hereinafter, "RAT"). Over the last year and a half, the process to create this tool has lacked transparency, despite our repeated requests for information.

In the 2018 calendar year, our staffs met approximately once a month as part of the MacArthur Pretrial Working Group where the RAT and its development were topics of conversation. During those meetings, our staffs repeatedly requested specific information about its progress. For many months, we were told that Dr. Berk, the professor who built the APPD risk tool in 2009, was working on development. In August, 2018, your staff passed out a worksheet listing possible factors upon which the tool would be based. In December, your staff provided us with a list of factors that you planned to use in the proposed tool. This was the sum-total of a year's discussion of the RAT.

In a January MacArthur site visit, Michael Bouchard and Jaime Henderson informed the staff of both of our offices, as well as the funders, that the data for the tool's development was "stale" and that new data was required. After some pressing, they acknowledged that this meant the process would have to start afresh. There was, we then learned, nothing to show for nearly 18 months of work.[1] Your staff also informed our staffs that risk had been defined as the likelihood of re-arrest in 18 months, a definition on which we were not consulted and with which we cannot agree. When pressed, Dr. Henderson told those present that this definition had been created in 2012, at least three years before we applied for our MacArthur grant.

In March, after the Defender stated its concerns regarding a risk assessment tool, the FJD asked if the Defender had an alternative plan that would not involve using such a tool. At the time, we believed that the FJD was willing to engage in an informed discussion regarding an alternative plan to eliminate cash bail without a RAT. On

[1]The Macarthur Grant application shows that Dr. Berk received FJD data in April 2017.

March 27, 2019, at your request, Ms. Bradford-Grey presented a comprehensive pretrial plan that did not involve a RAT, based on best practices from around the country, which District Attorney Krasner supported, in large part. At that presentation, we expressed our willingness to move forward on this plan working together: the FJD, the District Attorney and the Defender Association. The FJD did not respond to this presentation.

Instead, on April 10th, Michael Bouchard told MacArthur Board Members that the FJD was continuing to move forward in building the RAT and that all other stakeholders had agreed to join in these efforts. This declaration was a misrepresentation of our positions and our previous understanding. A week later, at the most recent meeting of the Pretrial Working Group, an organizational chart was distributed which listed the FJD as final arbiters of all decisions regarding the RAT. The MacArthur Initiative has always been collaborative—indeed, such collaboration is a key component of its design. Unfortunately, we can no longer participate in a process that is fundamentally flawed, leaves no room for healthy conversations regarding contrary or alternative proposals, and lacks the transparency necessary for all the stakeholders to have equity in the final product.

The FJD has proposed the creation of a research council that will advise stakeholders throughout the creation of a tool and will review any final proposals. Your staff has indicated that there is something for this council to review, although we do not know if this is Dr. Berk's creation, or some other model. Regardless, we cannot support the creation of such a council, based upon our experience with this process so far and the misrepresentations that have been made to our offices and to the funders.

The Defender Association believes, first and foremost, that the assumption that cash bail cannot be ended without the use of a RAT is a false one. We all agree that there is an urgent need to end wealth-based detention and curb the racial disparities that continue to plague our criminal justice system. A tool that is based on historical data steeped in racial bias not only cements existing racial disparities, but erases the unique circumstances of each person and further dehumanizes those entangled in the criminal justice system. A flurry of research in the last several years, including a recent article from the largest tech companies in the country[2], has outlined these dangers in detail. To that end, the Defender Association presented, at your request and as noted above, a comprehensive pretrial plan that ends the use of wealth-based detention

[2] https://www.bloomberg.com/news/articles/2019-04-26/major-tech-firms-come-out-against-police-use-of-ai-algorithms

without the use of a RAT.

As the DAO has said repeatedly, it is not opposed to a RAT in principle. However, we required three things: first, that the tool be transparent so that we know what factors are considered and what weight they would be given; second that the tool does not produce racial, ethnic or other disparities; and third, that the factors included reflect a general agreement among the stakeholders and the community. For the last 18 months, you have refused to tell us what factors you intend to consider that could accomplish this goal. Instead, we have been told that further steps to end cash bail must be delayed until the tool has been constructed. Increasingly, we question whether this has been an excuse for the failure to move forward to end cash bail, as promised. These concerns are bolstered by the fact that the "robust alternatives to cash bail" promised in the MacArthur grant applications have never materialized.

Your actions at the most recent MacArthur site visit on April 10th and at the April 17th Working Group Meeting make it abundantly clear that our offices will continue to be shut out of the process and our positions will be largely ignored. We ask you, again, to reconsider your commitment to this tool and instead to join us in working to end the use of wealth-based detention without a RAT.

Respectfully,

Keir Bradford-Grey
Chief Defender
Defender Association of Philadelphia
1441 Sansom St.
Philadelphia, PA 19102

Lawrence S. Krasner
Philadelphia District Attorney
3 South Penn Square
Philadelphia, PA 19107